IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION (L) NO.451 OF 2006

...

BGH Exim Limited ...Petitioner

v/s.

Ganesh Benzoplast Limited ...Respondent

...

Mr.Bergis Colabawala i/b Madekar & co. for the Petitioner.

Mr.Gaurav Joshi i/b Little & co. for the Respondent.

...

**CORAM: D.K.DESHMUKH, J.**

**DATED:** 23RD AUGUST, 2006

**P.C.:**

1. This petition is filed under Section 9 of the Arbitration & Conciliation Act claiming an interim orders against the Respondents.

. The first interim order that is sought is a mandatory order directing the Respondents to perform their part under the MOU dated 16th May, 2006 by giving said tank i.e. MS Tank No.201, on hire to the Petitioners and to issue a letter of readiness of the said Tank in favour of the Petitioners. The Petitioners also pray for an order of injunction restraining the Respondents from dealing in any manner or parting with possession or encumbering or creating third party rights in relation to MS Tank No.201. These reliefs are claimed on the footing that there is a MOU reached between the parties dated 25th May, 2006. According to the Petitioners, under this MOU, MS Tank No.201 was to be made available by the Respondents to the Petitioners for storage of the chemical that they were to import. According to the Petitioners they applied for a licence with the authority for importing the chemical. After the application was submitted by the Petitioner for the licence, for the purpose of scrutinizing the application for licence, the authority has to inspect the tank which was taken on hire by the Petitioners and to enable the authority to inspect the tank, according to the Petitioners the Respondents were

under an obligation to issue the letter of readiness. According to the Petitioners, as the Respondents did not issue a letter of readiness, the authority could not inspect the tank and therefore, the Petitioners have not been able to get the licence from the authority for importing the chemical. According to the Petitioners, the Respondents by failing to give the letter of readiness have committed breach of the agreement between the parties and therefore the Petitioners are entitled to the interim orders that are sought.

2. According to the Respondents, on the other hand, it is submitted that there is no concluded contract between the parties. The MOU which is filed by the Petitioners at Exh.A, according to the Respondents was sent to the Petitioners along with a covering letter, wherein it was stated that the Petitioners should sign the MOU and return it to the Respondents. According to the Respondents to this date the Petitioners have not sent back the M.O.U. signed by the Petitioners to the Respondents and therefore, there is no concluded contract between the parties. It is also contended that the MOU does not cast any obligation on the Respondents to issue a letter of

readiness to enable the authority to inspect the tank so that they can scrutinise the application filed by the Petitioners for licence.

3. Now, if in the light of these rival submissions the record of the case is perused, so far as letter of readiness is concerned, it is referred to in clause 5 of MOU. Clause 5 reads as under:

> 5. **Date of Commencement of Storage Charges:**
>
> The storage/ handling charges shall commence from the date of the letter of readiness of tank issued to you.

Though the learned Counsel for the Petitioners submits that the Respondents were under a duty to issue a letter of readiness so as to enable the authority before whom the Petitioners had applied for grant of licence to import the chemical to inspect the tank, I do not find any such clause in the agreement. I have also not been pointed out anything else which casts such an obligation on the Respondents. I do not find any clause in the agreement, which creates a right in the Petitioners

and the corresponding obligation on the Respondents to issue a letter of readiness in favour of the Petitioners so that the authorities who are scrutinizing the application of the Petitioners for grant of licence to import the chemical could inspect the tank. Therefore, in my opinion, the very foundation of the application is nonexistent. It is further to be seen here that the Respondents have stated that the MOU on the basis of which the present Petition has been filed was sent by the Respondents to the Petitioners along with covering letter dated 25th May, 2006. That letter reads as under:-

> Date: May 25, 2006
>
> To
> M/s.BGH Exim Limited,
> DBZ/S/140 Ward 12-A,
> Gandhidham
> Kutch, Gujarat
>
> Kind Attn: Mr.Sanghvi
>
> Dear Sir,
>
> Reg: MOU for Hiring Storage Facility at our Liquid Storage Terminal at Goa.
>
> Kindly find enclosed herewith MOU in duplicate for hiring storage facility at our Liquid Storage Terminal at GOA for storing Naptha. Please return the duplicate of the same as token of acceptance to us.
>
> Thanking you,

Yours faithfully,
For Ganesh Benzoplast Ltd.

sd/-
Authorised signatory

In paragraph 8 of the affidavit-in-reply, the Respondents have stated thus:-

> 8. I say that thereafter despite repeated reminders and requests the Petitioner failed to return the executed copy of the MOU. The Petitioner did not even communicate the acceptance of MOU.

It is true that this affidavit-in-reply is filed by the Respondents only yesterday. But what is pertinent to be noted is that though the Petitioners annexed the copy of the MOU at Exh.A, they have not stated as to how they received the MOU. They have also not referred to any correspondence between the parties whereby the Petitioners requested the Respondents to issue a letter of readiness. Had there been a concluded contract between the parties which obliged the Respondents to issue the letter of readiness and the Respondents failed to issue such a

letter, then the Petitioners would have protested in writing. There is no such protest made in writing. In my opinion, therefore, it prima facie appears that there is no concluded contract between the parties. Therefore, obviously the Petitioners are not entitled to claim any interim reliefs of such drastic nature. Grant of relief in terms of prayer clause (a) of the Petition would amount to granting final relief to the Petitioners and grant of relief in terms of prayer clause (b) would amount to keeping the tank of the Respondents unused till the arbitration proceedings are finally decided, and this relief is claimed without investing any amount for securing the tank. Therefore, looking from any point of view, the Petitioners have no case. The Petition is, therefore, disposed of. Petitioners are directed to pay costs of this petition to the Respondents, as incurred by the Respondents.

All concerned parties to act on authenticated copy of this order.

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